

# Notice of Determination

by the Life Code Compliance Committee (Life CCC) on alleged non-compliance with the Life Insurance Code of Practice by a subscriber

<b>Reference:</b>	CX7721	<b>Date:</b>	27 July 2022
<b>Code sections:</b>	9.12, 8.7 <sup>1</sup>		
<b>Investigation:</b>	Consumer-reported Code breach allegation		

## The alleged Code breaches

The Consumer obtained a Life Insurance policy with a Total and Permanent Disability (TPD) benefit. The policy was issued by a Life Insurance Company that is a subscriber (the Subscriber) to the Life Insurance Code of Practice (the Code). The policy was owned by the Consumer.

The Consumer lodged a TPD claim which was accepted by the Subscriber on 26 February 2021. On 26 March 2021, the Consumer's legal representative lodged a complaint with the Subscriber in relation to it withholding payment of the claim benefit. The Consumer sought payment of interest pursuant to section 57 of the *Insurance Contracts Act 1984*.

On 24 May 2021, the Consumer's legal representative referred the matter to the Life Code Compliance Committee (Life CCC), alleging that the Subscriber had breached section 9.12 of the Code as it did not provide a final response to the Consumer's complaint within the required 45-calendar-day timeframe.

The Life CCC sought information from the Subscriber about its compliance with section 9.12 of the Code. In response, the Subscriber disagreed that it had breached section 9.12 on the basis that it was not possible to respond to the complaint within the timeframe because it had required additional information.

However, when the Subscriber examined its management of the case in order to respond to the Life CCC's request for information, it detected and subsequently reported a breach of section 8.7, as it had failed to request information as early as possible.

## Findings in accordance with Charter clause 7.4(b)(iii)<sup>2</sup>

The Life CCC assessed the matter and determined that the Subscriber:

- was not in breach of section 9.12 and that the allegation was unfounded and

<sup>1</sup> The Code sections are provided in full in the last section of the Determination.

<sup>2</sup> The Life CCC is bound by its Charter to use the terminology 'the reported allegation was proven in whole or in part or was unfounded.' This in essence requires the Life CCC to state if it determined there was a breach or not. The Life CCC will explain its determination in plain language in the body of the Determination.

- was in breach of section 8.7 of the Code and that the allegation was proven in whole.

## **The Life CCC findings and conclusion**

### **Section 9.12**

Section 9.12 of the Code relates to policies not owned by a superannuation fund trustee. Section 9.12 requires a subscriber, where possible, to provide a final response to a complaint in writing within 45 calendar days and to provide the information required under 9.12 (a) to (d) of the Code within its final complaint response letter.

The Life CCC considered that only the timeframe element of section 9.12 was relevant to the breach allegation.

The Subscriber received the complaint on 26 March 2021. Under the timeframe set out in section 9.12, it was required to respond to the complaint within 45 calendar days, by 10 May 2021. The response was instead provided on 21 May 2021, 56 calendar days after the complaint had been received.

The Subscriber argued that it had not breached section 9.12 because it had not been possible to provide a final response within the timeline prescribed by section 9.12 of the Code. The Subscriber stated that, due to the claim's complexity, it needed to conduct a detailed review of the handling and assessment of the claim to see whether there were unnecessary or unreasonable delays and whether an interest payment was warranted. As a result, the Subscriber was only able to finalise its position on the payment of interest outside the required timeframe of section 9.12 of the Code.

The Life CCC determined that the Subscriber was reasonably entitled to rely on the 'where possible' carve-out in section 9.12 and determined that the Subscriber was not in breach of section 9.12 and that the allegation was unfounded.

### **Section 8.7**

Section 8.7 requires a subscriber to request the information it needs to assess a claim as early as possible and to avoid multiple information requests where possible. The Life CCC considered the Subscriber's compliance with section 8.7 only in relation to its obligation to request information as early as possible.

The Subscriber acknowledged it was in breach of section 8.7 in this matter. Following an initial assessment of the claim, there was a delay of approximately two months in requesting third-party information needed to assess the claim further. The Subscriber noted that the delay was due to the complexity of the claim and the need for peer reviews of the claim after the initial assessment.

As a result, the Life CCC determined that the Subscriber was in breach of section 8.7 of the Code and that the allegation was proven in whole.

### **Serious non-compliance**

The Subscriber acknowledged that its breach of section 8.7 amounted to serious non-compliance with the Code because its failure to request information as early as possible had unnecessarily extended the time it took to assess the claim, delayed the payment of the benefit and resulted in financial detriment to the Consumer.

The Subscriber remediated the breach by making an interest payment of \$20,676 to the Consumer on 29 July 2021.

Given the extent of the delay, which was reflected in the interest payment outlined above, the Life CCC determined in accordance with Charter clause 7.4(b)(iv)<sup>3</sup> that the Subscriber's breach of section 8.7 amounted to serious non-compliance with the Code.

### **Key learnings**

This matter highlights the importance of requesting information in a timely manner. Delays, such as those caused by a breach of section 8.7, can result in inconvenience, stress and financial strain for consumers. In this matter, a two-month delay resulted in inconvenience and financial detriment involving a significant sum of \$20,000.

The Life CCC urges subscribers to consider the guidance it has previously provided to ensure that the progress of every claim is monitored appropriately and that any issues that might lengthen the claim assessment duration are identified early.

Training may also need careful review. Is your training sufficient to ensure skill gaps are addressed and that staff understand, not only what the minimum time requirements are, but the impact of unnecessary delay at a human level? Are staff truly aware of the implications for real people experiencing real and challenging situations? Such awareness across an organisation could go a long way towards ensuring that all the relevant processes and procedures work effectively to enable the resolution of claims as quickly as possible.

In this matter, although the original breach allegation was found to be not proven, the subscriber detected and reported a breach of a different section during the ensuing investigation. In the spirit of self-regulation, the Life CCC welcomes the Subscriber's identification and acknowledgement of the breach and its willingness to acknowledge it take appropriate remedial action. While the breach was an isolated incident, being alert to potential breaches and identifying their root cause is a critical tool for all organisations committed to continual self-improvement.

The Life CCC encourages all subscribers to actively engage with the requirements in the current Code and with the additional obligations in the upcoming revised Code. Robust compliance with the consumer protections enshrined in the Code helps improve the experience of customers, build trust in the community and lift standards across the whole industry.

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<sup>3</sup> The Life CCC is bound by its Charter to state, where applicable, whether it finds that a subscriber is responsible for serious and/or systemic non-compliance with the Code.

## Relevant Code Sections

### Section 8.7

**We** will request the information **we** need as early as possible and will avoid multiple information requests where possible.

### Section 9.12

#### **Where your Complaint is about a Life Insurance Policy that is not owned by a superannuation fund trustee**

Where possible, **we** will provide a final response to **your Complaint in writing** within 45 calendar days. **We** will tell **you**:

- a) **our** final decision in relation to **your Complaint** and the reasons for that decision;
- b) that **you** have the right to copies of the documents and information **we** relied on in assessing **your Complaint**, and if **you** request **we** will provide **you** (or **your** doctor, where appropriate) with copies within ten **business days**, in accordance with the Access to Information section of the **Code**;
- c) **your** right to take **your** Complaint to the Financial Ombudsman Service (**FOS**) if **you** are not satisfied with **our** decision, and the timeframe within which **you** must take **your** Complaint to **FOS**; and
- d) contact details for **FOS**.

The Life CCC is the independent body responsible for the administration and enforcement of the Life Insurance Code of Practice (the Code). It acts in accordance with the Life CCC Charter, which sets out the powers, duties, functions and responsibilities of the Committee, subject to any provisions in the Code. This Determination is issued in accordance with clause 7.4 of the Life CCC's Charter in order to facilitate agreement between the Life CCC and the Subscriber on corrective measures and the relevant timeframes for their implementation.